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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,615	07/28/2003	Darryl L. Snyder	1743008US1AP	5835
45069	7590	10/08/2004	EXAMINER	
FRED ZOLLINGER III P.O. BOX 2368 NORTH CANTON, OH 44720			CANFIELD, ROBERT	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/628,615	SNYDER ET AL.
	Examiner Robert J Canfield	Art Unit 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/18/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

1. This is a first Office action on the merits for application serial number 10/628615 filed 07/28/03. Claims 1-20 are pending.

2. The examiner acknowledges receipt of the IDS filed 11/18/03. An initialed copy of the 1449 form is attached.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-9 and 15-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. D 494,265 S to Snyder et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim clearly shows the structure of the claimed support frame and it would have been obvious at the time of the invention that the support frame could have been made from sheet metal for its inherent material properties and because sheet metal is a well known material used for fabricating support frames and brackets. When made of sheet metal the flanges

inherently will bend or pivot with respect to he body. The title of the invention would suggest that the frame of the claim could be used in the claimed environment within a wall as air ducts typically run within walls. While the patent claim fails to show the holes for the fasteners the examiner takes Official Notice that it was well known at the time of the invention to provide prefabricated fastener holes within support frames or brackets to eliminate the need for creating the holes in the field. Note MPEP 804 II. B. 3. which states that it is permissible to make an obvious type double patenting rejection using a design patent.

5. Claims 1, 2, 5-15 and 17-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. D 496,453 S to Snyder et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim clearly shows the structure of the claimed support frame and it would have been obvious at the time of the invention that the support frame could have been made from sheet metal for its inherent material properties and because sheet metal is a well known material used for fabricating support frames and brackets. When made of sheet metal the flanges inherently will bend or pivot with respect to he body. The title of the invention would suggest that the frame of the claim could be used in the claimed environment within a wall as air ducts typically run within walls. While the patent claim fails to show the holes for the fasteners the examiner takes Official Notice that it was well known at the time of the invention to provide prefabricated fastener holes within support frames or brackets

to eliminate the need for creating the holes in the field. See MPEP 804 II.B.3. which states that it is permissible to make an obvious type double patenting rejection using a design patent.

6. Claims 1, 2, 5, 6, 9, 10, 15, 19 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. D 494,670 S to Snyder. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim clearly shows the structure of the claimed support frame and it would have been obvious at the time of the invention that the support frame could have been made from sheet metal for its inherent material properties and because sheet metal is a well known material used for fabricating support frames and brackets. When made of sheet metal the flanges inherently will bend or pivot with respect to the body. The title of the invention would suggest that the frame of the claim could be used in the claimed environment within a wall as air ducts typically run within walls. While the patent claim fails to show the holes for the fasteners the examiner takes Official Notice that it was well known at the time of the invention to provide prefabricated fastener holes within support frames or brackets to eliminate the need for creating the holes in the field. See MPEP 804 II.B.3. which states that it is permissible to make an obvious type double patenting rejection using a design patent.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,866,377 to De Shutter.

See the frame of Figure 3.

9. Claims 1, 2, 5, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,809,350 to Lane.

See figure 3.

10. Claims 1, 2, 5, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,105,664 to Poradun.

See the entire disclosure.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 11, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,809,350 to Lane.

To have made the opening and therefore the flange of Lane oval would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art. It would have been an obvious choice of shape to use the mounting device with oval shaped vent pipes or ducts.

Vent pipes typically run within walls and while not shown or taught by Lane it would have been obvious at the time of the invention to one having ordinary skill in the art that the mounting device of Lane could have been used between studs in a wall as this is a typical location for a vent pipe to run.

13. Claims 3, 4, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,105,664 to Poradun

To have made the opening of Poradun rectangular would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art. It would have been an obvious choice of shape to use the mounting device with rectangular vent pipes or ducts and because Poradun suggests that any suitable shape may be provided at column 3.

Vent pipes typically run within walls and while not shown or taught by Poradun it would have been obvious at the time of the invention to one having ordinary skill in the art that the mounting device of Poradun could have been used between studs in a wall as this is a typical location for a vent pipe to run.

14. Claims 7, 8, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,105,664 to Poradun in view of U.S. Patent 3,866,377 to De Shutter.

Poradun provides all of the elements of these claims as noted or modified above except for providing opposed notched ends for receiving studs.

De Shutter teaches that it was known at the time of the invention to notch the ends at 76 of a support frame to accept studs as shown in figure 2. It would have been obvious at the time of the invention to one having ordinary skill in the art that the ends of the Poradun mount could have been notched as taught by De Shutter. It would have been obvious so the device of Poradun could be snugly mounted between adjacent studs within a wall.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635

09/29/04

